IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 396 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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MOHD. ARIF FAKIR MOHD. SUNDHIYAWALA

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 396 of 2002

MR PUSHPADATTA VYAS for Petitioner No. 1

MR AY KOGJE, APP for Respondent No. 1

..... for Respondent No. 2-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 07/08/2002

ORAL JUDGEMENT

1. By means of the present petition under Article 226 of the Constitution of India, the petitioner has prayed for appropriate writ, order or direction for

quashing and setting aside the order of externment dated 24.1.2002 passed by the Deputy Commissioner of Police (North), Vadodara City passed against the petitioner in exercise of powers under Section 56 of the Bombay Police Act (hereinafter referred to as the B.P.Act) R/w Section 59 of the B.P.Act, as well as the order dated 15.3.2002 passed by the Deputy Secretary, Home Department, Sachivalaya, Gandhinagar in appeal under Section 60 of the B.P.Act. Copy of the show cause notice issued to the petitioner along with aforesaid two impugned orders are produced by the petitioner in the present petition.

2. The petitioner has challenged the legality and validity of the order of externment on various grounds. However, ld. counsel Mr.Pushpadatta Vyas for the petitioner has restricted his arguments mainly on three points. The first point is that the order passed by the authority is without application of mind and the same is non-speaking on material and relevant aspects. So, the order cannot sustain. Harsh action of externment taken by the authority, therefore, should be quashed and set aside. The second point argued by ld. counsel Mr. Vyas is that extraneous facts have been considered without putting it to the notice of the petitioner especially when the alleged incident/ offence was found to be committed by a mob of approximately 300 to 350 persons because of a vehicular accident wherein one Muslim lady had succumbed to the injuries sustained in the said accident and mere presence of the petitioner was found at the spot of incident. In a spur of moment, a mob was dragged into a wrong emotion and stones were pelted at buses passing through the area where incident had occurred. The externing authority should not have concluded that the petitioner has committed an offence in violation of the surety bond executed by him pending externment proceedings. The third point argued by ld. counsel Mr. Vyas is that it is on record that the petitioner is doing a small business and the compass of the day to day activities of the petitioner is very narrow and there was no need to even extern the petitioner out of entire city of Vadodara. Even if allegations are accepted as they are, the externing authority could not have externed the petitioner from entire district Vadodara and all other adjacent districts. This is an improper exercise of jurisdiction in view of the settled legal propositions. So, on all these counts, it is prayed to quash and set aside the impugned order of externment.

3.1 Having considered the contents of the affidavit-in- reply filed by respondent nos. 2 & 3 and

the background of the averments made in the petition, it is found that the order under challenge has been passed without proper application of mind and that it is an infirm order. On facts, the notice to show cause was issued on 22.6.2001 and pending proceedings, the petitioner was asked to execute a bond of good behaviour and such bond was executed by the petitioner. Initiation of proceedings was only becuse of one criminal case registered on the complaint of a distant relataive and a neighbour in connection with a construction work giong on with some understanding. On such a ground no notice under Section 59 of the B.P.Act could not have been issued. Till five months, these proceedings could not be concluded and in the meanwhile, the incident referred by the externing authority had occurred on 10.12.2001. The second incident is considered mainly by the authority and same is not the part of the notice to show cause. Even pending proceedings, the petitioner was not offered an opportunity to explain as to why his involvement in the offence committed qua the properties of GSRTC buses by a mob, should not be considered as one of the important aspects in passing the order of externment.

3.2 In the first incident dated 17.1.2001, the petitioner was allegedly holding a knife and he has not been attributed any overt act even in the complaint. However, externing authority has described the petitioner as a person holding the iron rode at the time of the alleged incident inflicting blow with the iron rode (kosh) near the left eye-brow. This aspect though not there in the FIR itself, has been incorporated by the authority in the impugned order. Either this is a case of non-application of mind or can be said to be incorporation of the distorted facts only with a view to brand the petitioner as a "dangerous person".

3.3 Evaluation of evidence led by the petitioner-proposed externee, is not considered by the externing authority at all. Plain reading of the order under challenge gives an impression that proposed externee must not have led any evidence to substantiate his say. Written reply filed by the petitioner before the authority and the evidence led in support thereof has been totally ignored by the externing authority while passing the order of externment. This makes the order of externment non-speaking on material aspects. So, such an order cannot sustain in the eyes of law. On a first reading or on an impression when this Court feels that the authority was predetermined to pass a particular type of order, then such an order cannot be allowed to sustain.

3.4 The appellate authority also failed to consider the above discussed relevant aspects. The appellate authority could have remanded the matter to the externing authority directing the authority to afford an opportunity if any subsequent event needs consideration so that externee can put his say or may advance his defence. Chapter case registered on the strength of the complaint by the police officer was pending before the competent authority initiated under Section 110(h) of Code of Criminal Procedure. It was possible for the authority to initiate recovery proceedings of the amount of bond executed by the petitioner, but this less drastic measure has not been resorted to. The first incident occurred on account of some dispute with the neighbour in connection with erection of a toilet and as said earlier, this was a stray incident and on such a solitary incident, externment proceedings normally ought not to have been initiated. If the registered offences are considered, then the order of externment passed in the month of January 2002 also can be said to be the order passed at a belated stage. So, Mr. Vyas has rightly placed reliance on the decision of this Court in the case of Balvantsingh @ Nanio Kalyansingh Rajput v/s Deputy Commissioner of Police & Anr., 1999(2) GLR P.1023, wherein this Court has held that non-speaking order is not sustainable.

4. In the same way, when the authority has externed the petitioner from the entire district Vadodara i.e. Vadodara city and Vadodara Rural, his externment from other contiguous districts namely Anand, Panch Mahals, Narmada Bharuch is found bad as there is no element of justification as to why this petitioner is required to be externed from all these areas. He is neither a bootlegger, nor a drug trafficer, nor a habitual offender or a gangster who can operate in all these areas. It is not convincing to hold that he is found able to operate within the city area of Vadodara or from any of these areas. The circumstances provided in Section 56 for each contiguous district are non-existent in the instant case. Thus, the jurisdiction has not been exercised in judicious manner. Division Bench of this Court, while dealing with the case of Vrajlal Mohanlal v/s District Magistrate, Rajkot & Another, 1962(3) GLR 807, on the similar set of facts, has quashed and set aside the order of externment on this ground,observing that for externment from contiguous districts, existence of circumstances provided in Section 56 of the Act in each district is necessary.

5. In view of the facts and circumstances of the case narrated above and in view of settled legal position, impugned orders require to be quashed and set aside and petition requires tobe allowed.

6. For the reasons aforesaid, this petition is allowed. The impugned order of externment dated 24.1.2002 passed by the Deputy Commissioner of Police (North), Vadodara City as well as order dated 15.3.2002 passed by the Deputy Secretary, Home Department, Sachivalaya, Gandhinagar confirming the order of externment dated 24.1.2002, are hereby quashed and set aside.

Rule is made absolute. Direct Service is permitted.

07.08.2002 [C.K. BUCH, J]

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